

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JERRY LEON DEES, JR.,

Plaintiff,

Vs.

HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI
MOTOR AMERICA, INC.,

Defendants.

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CASE NO.
2:07-cv-00306-MHT-CSC

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE
TO EXCLUDE TESTIMONY AND EVIDENCE THAT WOULD VIOLATE THE
ATTORNEY-CLIENT OR WORK PRODUCT PRIVILEGES**

COMES NOW the Plaintiff, JERRY LEON DEES, JR. (“Dees”), and respectfully objects to Defendants’ motion in limine to exclude testimony and evidence that would violate the attorney-client or work product privileges (Doc. 140), stating as follows:

Defendants have moved specifically to exclude “any testimony, comments, or arguments relating to any discussions, meetings, advice or directions given by any member of HMMA’s or HMA’s Legal Department, including advice offered by Richard E. Neal, HMMA’s General Counsel, and Christopher N. Smith, HMMA’s Corporate Counsel, relating to the decision to terminate Plaintiff or the handling of the termination procedure for Plaintiff; and, any reference to remarks made by Shane Archer, an employee identified by Plaintiff as a “will call” witness, to counsel for Defendants that Plaintiff was not sleeping on the job.” [Def. Motion, Doc. 140, p. 1-2]

Plaintiff does not intend to elicit testimony from any witnesses that may be protected by either the attorney-client or work product privileges. Mr. Neal, however, can render testimony about a number of issues relevant to this case and not subject to the privileges, such as: (1) the development of HMMA's anti-harassment policy; (2) enforcement of the anti-harassment policy; and procedures in place to ensure the equal enforcement of HMMA's anti-harassment policy. All of these topics are relevant to Plaintiff's USERRA harassment claim, and Mr. Neal, as HMMA's general counsel, should be able to speak to these topics. Mr. Neal can also give testimony regarding HMMA's termination procedures. These procedures are relevant to Plaintiff's conversion claim.

Mr. Smith, likewise, has knowledge not protected by the attorney-client or work product privileges. Mr. Smith has made himself a witness in this case by supervising the alleged cleaning-out of Plaintiff's locker at HMMA months after Plaintiff was terminated, and also supervised the production of a video of the event. Mr. Smith can render testimony regarding the facts and circumstances surrounding this event. Mr. Smith is also believed to have knowledge regarding HMMA's search for the Daily Reports that have been destroyed.

Finally, Plaintiff has no intention of eliciting testimony from Shane Archer regarding the content of any protected discussions with Defendants' counsel. Plaintiff does note, however, that upon learning that Mr. Archer had discoverable information regarding this case, Defendants did not disclose Mr. Archer as having that discoverable information as required by Rule 26(a)(1)(A).

WHEREFORE, the PREMISES CONSIDERED, Plaintiff respectfully objects to Defendants' motion to excluded testimony from Richard Neal, Christopher Smith, or Shane Archer, or any other HMMA employee, to the extent that the elicited testimony does not violate the attorney-client or work product privileges..

Respectfully submitted,

s/ Jeffrey R. Sport
Jeffrey R. Sport (SPORJ5390)

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 23rd day of May, 2008, electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

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